IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 189 OF 2007
WITH
CIVIL APPLICATION NO. 330 OF 2007

Anandrao Dinkarrao Patil ..Appellant

Vs.

Mangal Vithal Sadigale @ Mangal Anandrao Sangar and ors. ..Respondents

Mr. H.S. Venegaonkar for appellant.
Mr. A.N. Mulla for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : April 02, 2007.

P.C.:

1. Heard Mr. Venegaonkar the learned counsel for the appellant-original plaintiff and Mr. Mulla the learned counsel for the respondent no.1 (original deft. no.1).

2. Regular Civil Suit No. 150 of 1993 was filed by the plaintiff for perpetual injunction in respect of the suit property, namely, Plot No.169 A, admeasuring 40 ft. x 110 ft. at Rendal. The plaintiff claimed that the said plot was sold to him by Shri Vilas Baburao Sangar (deft.no.2), the brother

of defendant no.3 Smt. Pushpatai Anandrao Sangar on or about 3/1/1986 for a total consideration of Rs.7000/- and the sale deed was registered. The defendant no.1 claimed that she was the second wife of Anandrao Sangar and, therefore, his first wife Smt. Pusphpatai (defendant no.3) was not entitled in law to dispose off the suit property. During the pendency of the suit, defendant no.1 died and, therefore, her minor daughter was brought on record through her guardian Shri Narayan Vithal Sadigale (maternal Uncle).

3. The trial court as well as the Lower Appellate Court held that the plaintiff proved his possession over the suit plot. The trial court further held that the defendant no.1 was trying to alienate or transfer the suit property without having any right and in fact she does not have such a right. This finding of the trial court has been disturbed by the Lower Appellate Court, which held that defendant no.1 had equal share in the suit property along with defendant no.3. The restraining order passed by the trial court against defendant no.1, therefore, required modification and that has been done in terms of the following

directions:-

"The defendant no.1 is hereby permanently restrained from obstructing the possession of the plaintiff over the suit property till she recovers possession in due course of law."

. The Lower Appellate Court proceeded further to reject the prayer of the plaintiff to restrain the defendant no.1 from alienating the suit property and this would need some corrections in this second appeal.

4. The right of the defendant no.1 to share the property of Anandrao Sangar equally with defendant no.3 as held by the Lower Appellate Court does not call for any interference in view of the evidence that has been reappreciated by the Lower Appellate Court. The remedy available for defendant no.1 or defendant no.1a now is to file a suit for partition and unless such proceedings are finalised the plaintiff i.e. the present appellant cannot be disturbed over his possession of the suit property. At the same time he also will have to be restrained from alienating or

creating in any manner third party interests over the suit plot or the construction undertaken on the same until the defendant no.1a gets her share determined in partition.

5. Hence the second appeal is disposed off by the following order by consent:-

(a) The defendant no.1a is restrained permanently from obstructing the possession of the plaintiff over the suit property until she recovers her share of the property in due course of law and also from creating any third party interest in respect of the suit property.

(b) The plaintiff is restrained from creating any third party interest by any means either in the suit plot or in the construction that he has carried out or may carry out on the suit plot until the defendant no.1a gets her share in the suit plot determined by due legal proceedings.

6. The Civil Application No. 330 of 2007 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)